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13 VLSI TECHNOLOGY LLC

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15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA**

17  
18 INTEL CORPORATION and APPLE INC.,

19 Plaintiffs,

20 v.

21 FORTRESS INVESTMENT GROUP LLC,  
FORTRESS CREDIT CO. LLC, UNILOC  
22 2017 LLC, UNILOC USA, INC., UNILOC  
LUXEMBOURG S.A.R.L., VLSI  
23 TECHNOLOGY LLC, INVT SPE LLC,  
INVENTERGY GLOBAL, INC., IXI IP, LLC,  
24 and SEVEN NETWORKS, LLC,

25 Defendants.

Case No. 3:19-cv-07651-EMC

**DEFENDANTS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
THEIR JOINT MOTION TO DISMISS  
AND STRIKE PLAINTIFFS' AMENDED  
COMPLAINT**

Hon. Edward M. Chen

Date: December 17, 2020

Time: 1:30 p.m.

Dept.: Courtroom 5

Defendants Fortress Investment Group LLC (“Fortress”), Fortress Credit Co. LLC (“Fortress Credit”), Uniloc 2017 LLC (“Uniloc 2017”), Uniloc USA, Inc. (“Uniloc USA”), Uniloc Luxembourg S.a.r.l. (“Uniloc Luxembourg”), VLSI Technology LLC (“VLSI”), INVT SPE LLC (“INVT”), Inventergy Global, Inc. (“Inventergy”), IXI IP LLC (“IXI”), and Seven Networks, LLC (“Seven Networks” and, collectively, “Defendants”) have moved to dismiss and to strike the Amended Complaint (“AC”) of Plaintiffs Apple Inc. (“Apple”) and Intel Corporation (“Intel” and, collectively, “Plaintiffs”). In support of their Motion, Defendants request that the Court take judicial notice of certain public records maintained by the United States Patent and Trademark Office (“USPTO”) and various court and administrative decisions.

### **ARGUMENT**

In ruling on a motion to dismiss under Rule 12(b)(6), “courts must consider . . . matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). A fact is judicially noticeable if it is “not subject to reasonable dispute.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) (quoting Fed. R. Evid. 201(b)). Here, Defendants seek judicial notice of two categories of documents: (1) publicly available records of the USPTO; and (2) administrative decisions in the allegedly “meritless” infringement actions. All of these materials are subject to judicial notice.

#### **I. THE RECORDS OF THE USPTO ARE JUDICIALLY NOTICEABLE**

Records maintained by the USPTO are judicially noticeable because these records are publicly available and “not subject to reasonable dispute.” *Balance Studio, Inc. v. Cybernet Ent., LLC*, No. 15-CV-04038-DMR, 2016 WL 1559745, at \*1, n.3 (N.D. Cal. Apr. 18, 2016) (taking notice of USPTO records); *see also Khoja*, 899 F.3d at 1001 (noting that courts can take notice of “patent application[s]”); *Klang v. Pflueger*, 2014 WL 4922401, at \*1 (C.D. Cal. July 10, 2014) (taking judicial notice of USPTO patent assignment records and the patents at issue “because they are public records”). This Court previously took notice of, and relied on, certain USPTO records in its Order Dismissing Plaintiffs’ Complaint. Dkt. 190 (herein, “Order”) at 14:9-23. Moreover, Plaintiffs did not oppose Defendants’ prior request to take notice of these materials.

Defendants seek judicial notice of three categories of USPTO records:

First, Defendants seek judicial notice of three patents cited in the AC: (1) U.S. Patent No. 6,215,403, which “relates to a wireless monitoring and more particularly to a suffocation prevention system” that is meant “to ensure proper breathing to infants and bed-ridden individuals”; (2) U.S. Patent No. 7,220,220, which relates to an “exercise monitoring system and methods”; and (3) U.S. Patent No. 6,058,437, which relates to the use of a “Translation Lookaside Buffer” that keeps track of data location in a shared memory. AC ¶¶ 213, 292; Motion at 12-13; Declaration of Olivia L. Weber ISO Defendants’ Joint Motion to Dismiss and Strike (“Weber Decl.”) ¶¶ 3-5, Exs. A-C. Courts routinely take notice of patents. *See, e.g., Klang*, 2014 WL 4922401, at \*1 (Patents “are proper subjects for judicial notice under Federal Rule of Evidence 201.”); *GeoVector Corp. v. Samsung Elecs. Co.*, 234 F. Supp. 3d 1009, 1016, n.2 (N.D. Cal. 2017) (“The Korean Patent is also the proper subject of judicial notice as it is part of a publicly available government record.”). Moreover, because the AC relies on these patents, they are “incorporated by reference,” and the Court may consider them on this basis as well. *GeoVector Corp.*, 234 F. Supp. 3d at 1016.

Second, Defendants seek judicial notice of the number of patents that have been assigned to Intel and Apple since the beginning of 2000. *See Motha v. Time Warner Cable Inc.*, No. 16-CV-03585-HSG, 2016 WL 7034039, at \*2 (N.D. Cal. Dec. 2, 2016) (taking notice of the fact that patent assignments were recorded). A list of such patents can be found by searching the USPTO’s Patent Full Text (“PaFT”) database which is publicly available. Weber Decl. ¶¶ 6-7. A search of this database demonstrates that Intel and Apple have been assigned more than 37,000 and 22,000 patents, respectively, since January 1, 2000. *Id.*, Ex. D at 2-5.

Third, Defendants seek judicial notice of the number and ownership of patents that fall within certain patent classifications as defined by the USPTO. The USPTO has established a patent classification scheme called the Cooperative Patent Classification (CPC).<sup>1</sup> As explained in Defendants’ Motion, some of these classifications fall within Plaintiffs’ broadly defined “markets.” Motion at 17-18. A search of the PaFT database demonstrates the following:

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<sup>1</sup> <https://www.uspto.gov/web/patents/classification/cpc>

- 1           • The USPTO has issued over 560,000 patents since January 1, 2000 under the CPC  
2           classification for “Electric Digital Data Processing.” Weber Decl. ¶ 9, Ex. D at 6-  
3           7;
- 4           • The USPTO has issued over 390,000 patents since January 1, 2000 under the CPC  
5           classification for “Semiconductor Devices.” *Id.* ¶ 10, Ex. D at 8-9;
- 6           • The USPTO has issued over 62,000 patents since January 1, 2000 under the CPC  
7           classification for “Detecting, measuring or recording for diagnostic purposes;  
8           Identification of persons.” *Id.* ¶ 12, Ex. D at 10-11. All three of Defendants’  
9           allegedly “substitute” patents in the purported “health monitoring” market share  
10          this CPC main group. *Id.* ¶ 11, Ex. E. at 2-4. According to the USPTO database,  
11          Apple and Intel own 153 and 124 patents in this group, respectively. *Id.* ¶¶ 13-14,  
12          Ex. D at 12-15; and
- 13          • The USPTO has issued over 67,000 patents since January 1, 2000 under the CPC  
14          classification for “Security arrangements for protecting computers, components  
15          thereof, programs or data against unauthorized activity.” *Id.* ¶ 16, Ex. D at 16-17.  
16          Seven of Defendants’ patents in the alleged “digital rights management” market  
17          share this CPC main group. *Id.* ¶ 15, Ex. F at 2-8. According to the USPTO  
18          database, Intel and Apple own 1,935 and 730 patents in this group, respectively.  
19          *Id.* ¶¶ 17-18, Ex. D at 18-21.

20 The Court previously took notice of, and relied on, searches of the USPTO PaFT database. Order  
21 at 14:9-23. It should do the same here.

## 22 **II. THE PROCEEDINGS OF ADMINISTRATIVE AGENCIES ARE JUDICIALLY** 23 **NOTICEABLE**

24 It is well established that courts may take judicial notice of decisions made by  
25 administrative agencies. *Papai v. Harbor Tug & Barge Co.*, 67 F.3d 203, 207, n.5 (9th Cir. 1995),  
26 *rev’d on other grounds*, 520 U.S. 548 (1997) (“Judicial notice is properly taken of orders and  
27 decisions made by other courts and administrative agencies.”). This includes decisions by the  
28 Patent Trial and Appeal Board (“PTAB”) on whether to institute *inter partes* review. *See, e.g.*,

1 *Finjan, Inc. v. Blue Coat Sys., Inc.*, No. 15-CV-03295-BLF, 2016 WL 7732542, at \*1, n.1 (N.D.  
 2 Cal. July 25, 2016) (“The Court takes judicial notice of the PTAB’s decisions on whether to  
 3 institute IPR for these patents.”); *Atlas IP LLC v. Pac. Gas & Elec. Co.*, No. 15-CV-05469-EDL,  
 4 2016 WL 1719545, at \*1, n.1 (N.D. Cal. Mar. 9, 2016) (taking “judicial notice of the Final Written  
 5 Decision of the Patent Trial and Appeal Board.”).

6 As explained in Defendants’ Motion, the AC repeatedly alleges that Defendants’ patents  
 7 are weak and meritless, *e.g.*, AC ¶¶ 2, 10, 30, 34, 38, 39, 43, 88, 94, 96, 105, 430, 431, and more  
 8 than 150 paragraphs in the AC are directed at attacking litigation conduct, Motion at 38.

9 Accordingly, Defendants seek judicial notice of the following decisions issued by the PTAB  
 10 denying Plaintiffs’ request for *inter partes* review on Defendants’ patents:

- 11 • *Apple Inc., v. Seven Networks, LLC*, No. IPR2020-00425 (P.T.A.B. Sept. 1, 2020);
- 12 • *Apple, Inc. v. Seven Networks, LLC*, No. IPR2020-00507 (P.T.A.B. Sept. 1, 2020);
- 13 • *Apple Inc., v. Seven Networks, LLC*, No. IPR2020-00189 (P.T.A.B. June 11, 2020);
- 14 • *Apple Inc. et al. v. INVT SPE LLC*, No. IPR2018-01473 (P.T.A.B. Mar. 25, 2020);
- 15 • *Apple Inc. et al. v. INVT SPE LLC*, No. IPR2018-01555 (P.T.A.B. Feb. 28, 2020);
- 16 • *Apple Inc. et al. v. INVT SPE LLC*, No. IPR2018-01581 (P.T.A.B. Feb. 28, 2020);
- 17 • *Intel Corporation v. VLSI Technology LLC*, No. IPR2018-01312 (P.T.A.B. Feb. 19,  
 18 2020);
- 19 • *Intel Corporation v. VLSI Technology LLC*, No. IPR2018-01040 (P.T.A.B. Feb. 12,  
 20 2020);
- 21 • *Intel Corporation v. VLSI Technology LLC*, No. IPR2018-01107 (P.T.A.B. Feb. 10,  
 22 2020);
- 23 • *Intel Corporation v. VLSI Technology LLC*, No. IPR2019-01196 (P.T.A.B. Jan. 7, 2020);
- 24 • *Intel Corporation v. VLSI Technology LLC*, No. IPR2018-01296 (P.T.A.B. Apr. 11,  
 25 2019);
- 26 • *Intel Corporation v. VLSI Technology LLC*, No. IPR2019-00034 (P.T.A.B. Apr. 11,  
 27 2019);
- 28 • *Apple Inc. v. Uniloc 2017 LLC*, No. IPR2017-01993 (P.T.A.B. Mar. 6, 2019);
- *Apple Inc. and ZTE (USA) Inc. v. INVT SPE LLC*, No. IPR2018-01474 (P.T.A.B. Mar. 5,  
 2019);
- *Apple Inc. and ZTE (USA) Inc. v. INVT SPE LLC*, No. IPR2018-01478 (P.T.A.B. Feb. 19,  
 2019);

- *Intel Corporation v. VLSI Technology LLC*, No. IPR2018-01038 (P.T.A.B. Dec. 4, 2018);
- *Apple Inc. v. Uniloc Luxembourg S.A.*, No. IPR2017-02202 (P.T.A.B. May 1, 2018).

### III. CONCLUSION

For the reasons stated above, the Court should grant Defendants' request for judicial notice.

Dated: September 15, 2020

Respectfully submitted,

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**ECF ATTESTATION**

I, Olivia Lauren Weber, am the ECF user whose ID and password are being used to file DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF THEIR JOINT MOTION TO DISMISS AND STRIKE PLAINTIFFS' AMENDED COMPLAINT. I hereby attest that I received authorization to insert the signatures indicated by a conformed signature (/s/) within this e-filed document.

By: /s/ Olivia Lauren Weber  
Olivia Lauren Weber